IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 13634 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ADARSH SEVA MANDAL, BRAHMANVAS - Petitioner(s)
Versus
MAMLATDAR SHRI & 2 - Respondent(s)

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Appearance :
MR ASHISH M DAGLI for Petitioner(s) : 1,
DS AFF.NOT FILED (N) for Respondent(s) : 1 - 2.
MR NEERAJ SONI A.G.P. for Respondent(s) : 3,
NOTICE SERVED BY DS for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 21/06/2007

ORAL JUDGMENT

1. **RULE**. Mr. Neeraj Soni learned A.G.P., waives service of rule on behalf of the respondents. At the request of the learned advocates for the parties the

matter is taken up for final hearing today itself.

2. The petitioner is a Trust which organizes cattle camps during water scarcity. The petitioner in this petition has challenged the order passed by Mamlatdar Sami, who is respondent no. 1 herein, dated 25th May, 2007, whereby the petitioner has been called upon to pay Rs.6,90,690=00 on the ground that the petitioner had committed irregularities in maintaining cattle camps and thereby illegally obtained monetary benefit from the Government.

3. I have heard Mr. Dagli learned advocate for the petitioner and Mr. Neeraj Soni learned A.G.P., for the respondents. I have also perused the record of the petition. It appears that the Government had evolved a scheme wherein it was provided subsidy of Rs.10=00 per cattle per day in the cattle camp. The petitioner was having cattle camps at five villages of Sami Taluka, namely, (1) Adgam (2) Haripura (3) Koddha (4) Anwarpura (5) Badarganj. It is alleged against it that it had maintained more than 1,000 cattle in the camp and it had also committed several other irregularities of the like nature. These irregularities have been enumerated in the order dated 25th May, 2007 of respondent no.1 In the

opinion of respondent no. 1 the petitioner had illegally obtained the benefit of Rs.6,90,690=00 and it was required to refund the same to the Government. Hence, by the aforesaid order, it has called upon to refund the said amount.

3.1. It is the submission of Mr. Dagli learned advocate for the petitioner that the impugned order has been passed without affording any opportunity of hearing and, therefore, it is in violation of principles of natural justice. It is also his submission that the petitioner has not committed any fraud or irregularity and it has obtained legitimate benefit under the aforesaid scheme of the Government. As against that Mr. Soni learned A.G.P., has supported the order and has submitted that considering the finding arrived at by respondent no. 1, the order is just and proper.

4. I have carefully perused the impugned order. It is entirely based on the disputed questions of facts. It is also an admitted fact that the petitioner has not been granted opportunity of hearing before passing the said order. When such order is passed by the concerned authority it is always necessary that the affected person be given adequate opportunity to defend his interest and

to allow him to have personal hearing as also production of the relevant material to substantiate his case. In the present case, this is absent. Therefore, it is obvious that the impugned order is passed in violation of principles of natural justice and it is required to be quashed and it is hereby quashed and set aside. The matter is remanded to respondent no. 1 for taking fresh decision on the issue after granting adequate opportunity of hearing and also to permit him to produce relevant material on record to support his case. Hence, the following direction:-

4.1. On receipt of the papers of the case, respondent no. 1 shall issue notice to the petitioner at least one week in advance from the date of hearing, to enable representative of the petitioner to remain present before respondent no. 1 and to plead its case. The petitioner be permitted to produce all the relevant material on record to support its case. Respondent no. 1 is also directed to furnish copy of the documents which the Government seeks to place reliance. After hearing the petitioner, respondent no. 1 shall take the decision strictly on the merits of the case and in accordance with law, taking into consideration the relevant material and also the submissions of the petitioner. The decision that

may be taken shall be intimated to the petitioner within ten days from the date of the decision. Till such time, no recovery shall be made.

5. Rule is made absolute to the aforesaid extent with no order as to costs.

[Akshay H. Mehta, J.]

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